

17 February 2011

Office of the Secretary  
Federal Trade Commission  
Room H-113  
600 Pennsylvania Avenue, NW  
Washington DC 20580

**RE: Comments for FTC in response to FTC Preliminary Report: *Protecting Consumer Privacy in an Era of Rapid Change* (December 2010), by Data Privacy Day, a division of The Privacy Projects**

As director of the Privacy Projects<sup>1</sup> I want to thank the Federal Trade Commission (FTC) for its series of roundtables and preliminary report on consumer privacy (the Report). The evaluative process the FTC has set in motion will undoubtedly benefit citizens as they continue to embrace and use rapidly evolving technologies and attempt to protect the privacy of their personal information in the process.

In its December report, the FTC recommended, as part of its proposed framework addressing the commercial use of consumer data, that “stakeholders undertake a broad effort to educate consumers about commercial data practices and the choices available to them. Increasing consumer understanding of the commercial collection and use of their information is important to facilitating competition on privacy across companies.” (*Report at vii.*)

In particular, the FTC has requested input regarding the following questions regarding education:

- 1) How can individual businesses, industry associations, consumer groups, and government do a better job of informing consumers about privacy? and
- 2) What role should government and industry associations have in educating businesses?

## Introduction

The FTC’s Report proposes a “Framework for Businesses and Policymakers.” The scope of that framework includes “all commercial entities that collect or use consumer data that can reasonably be linked to a specific consumer, computer or other device.” The framework sets

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<sup>1</sup> The Privacy Projects is a nonprofit think tank and research organization dedicated to enhancing consumer privacy and data protection in regulatory controls, technological innovation and consumer protection with key stakeholders through collaborative privacy standards, cooperation and shared responsibility in the areas of individual data protection and management of personal information.  
<http://theprivacyprojects.org/>

forth recommended principles for companies, including the need to educate customers and consumers about best practices for protecting personal information. While companies are crucial to the education effort, however, they are not sufficient. As the report suggests in its discussion of “Greater Transparency,” “all stakeholders should work to educate consumers about commercial data privacy practices.” (Report, Proposed Framework, and Report at 69.) In this context “all stakeholders” must include government, nonprofits, academics, educators, businesses and industry associations. Just as these groups all contributed to the Roundtable process, each of these groups needs to continue to be involved actively in the educational endeavor that results from that process. More importantly, these stakeholders should work collectively and collaboratively toward this goal. Individual businesses, industry associations, consumer groups, and government can do a better job of informing consumers about privacy by working together.

## Government Support of and Collaboration with Nonprofits Dedicated to Privacy Education

Wherever possible, government agencies, including the FTC, should collaborate actively with awareness efforts dedicated to promoting privacy education in the United States. Data Privacy Day<sup>2</sup>, for example, managed by the Privacy Projects, is an international effort designed to promote privacy education and awareness. See [www.dataprivacyday.org](http://www.dataprivacyday.org) for a history of the day and educational resources. The American Library Association<sup>3</sup> also dedicates substantial resources to educating communities and patrons about privacy, sponsoring “Choose Privacy Week” each May. See <http://www.privacyrevolution.org/> for more information. The National Cyber Security Alliance<sup>4</sup> works to educate consumers and young people in the security space sponsoring, among other initiatives, National CyberSecurity Awareness Month, the C-Save program, and the campaign “Stop. Think. Connect.” See <http://www.staysafeonline.org/> for more information. Similar to the FTC-sponsored National Consumer Protection Week<sup>5</sup>, these celebrations of privacy and security offer opportunities throughout the year to focus national and international attention on the privacy issues raised by our networked lives. Having representatives and officials from the FTC and other government agencies working in the privacy space actively and substantively involved with these efforts improves participation across the country, and opens doors to more widespread educational opportunities.

Because educating consumers is vital, this collaborative educational effort needs to extend more broadly and more formally to young people. Ultimately, privacy and security

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<sup>2</sup> Data Privacy Day began as Data Protection Day in the European Union in January 2007. The first Data Privacy Day was celebrated by the United States and Canada in January 2008 and has been growing since. <http://dataprivacyday2011.org/history/>

<sup>3</sup> <http://www.ala.org/>

<sup>4</sup> <http://www.staysafeonline.org/>

<sup>5</sup> <http://www.ncpw.gov/>

education should be incorporated into school curricula across the country. Our goal should be to teach best practices in the areas of privacy and security and digital citizenship to school children of all ages as necessary life skills. Educated children and young people will become informed consumers better able to protect their personal information and to express their privacy preferences. To accomplish this goal, overt collaboration among multiple stakeholders is essential. The work being done by the FTC's Consumer Education group in the area of privacy and security for young people, including *Net Cetera* and *Heads Up* featured at OnGuard Online, makes the FTC an ideal partner for nonprofits working in the privacy education and awareness space for educators, parents & children, teens and young adults. Collaboration can also be effective across agencies. Because of the educational materials on privacy the FTC has created, the FTC could provide substantial support for the awareness and education tracks of the National Initiative for CyberSecurity Education (NICE), led by the National Institute of Standards and Technology (NIST) ([Track One](#) led by the Department of Homeland Security<sup>6</sup> and [Track Two](#) led by the Department of Education and National Science Foundation<sup>7</sup>). While the NICE program is primarily dedicated to advancing cyber security, privacy is necessary to security, and the educational endeavor should address both topics.

Explicit recognition, substantive participation, and financial support from government agencies like the Federal Trade Commission would accomplish three goals: 1) sponsorship would reinforce the government's demonstrated interest in and commitment to the importance of privacy education; 2) contribute to the long-term survival and far-reaching impact of organizations dedicated to providing relevant education in a rapidly changing digital environment; and 3) open doors at the state and national levels to allow these groups to participate in and affect the adoption of privacy education in schools.

Over the past several years, Data Privacy Day has brought stakeholders together to advance privacy awareness and education. National Data Privacy Day has been recognized by both the U.S. House of Representatives in 2009 and by the U.S. Senate in 2009, 2010, and 2011. A number of Governors have recognized DPD at the state level, and the National Association for Attorneys General (NAAG) recognized DPD with a resolution in 2010. As a result of the 2010 NAAG resolution, numerous Attorneys General took action to raise awareness about privacy issues in their respective states this year. Each state with a Chief Privacy Officer has also undertaken some participation in Data Privacy Day for the past two years. Our experience shows that explicit recognition raises the profile of an educational endeavor and leads to greater substantive participation. Collaboration also leads to more efficient sharing of resources, improved communication across stakeholder groups, increased dissemination of materials and access points, and, consequently, maximization of effect of dollars invested.

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<sup>6</sup> <http://csrc.nist.gov/nice/awareness.htm>

<sup>7</sup> <http://csrc.nist.gov/nice/education.htm>

## Businesses – Government and Industry Associations Should Provide Education

The FTC Report outlines a digital reality in which companies that collect consumer data wield tremendous power and in which consumers typically lack sufficient knowledge and information to make educated decisions about the uses of their data. In this unbalanced situation, businesses that are accountable for their data collection and use practices and businesses that are dedicated to the education of the consumer are vital.

Numerous corporations, large and small, participate in Data Privacy Day by conducting privacy training for their employees and privacy oriented events for their communities.<sup>8</sup> As part of the Data Privacy Day effort, we also attempt to collect and make available educational materials and resources for businesses, recognizing that many small businesses are much too small to have in house counsel, much less a privacy-dedicated employee. See <http://dataprivacyday2011.org/activities/business-resources>. Some large multinational companies are willing to share resources, sample policies and training materials with smaller companies. Other companies have been willing to create educational materials pertinent to their areas of interest. Law firms and consulting groups have also been willing to offer free resources to businesses in conjunction with Data Privacy Day. Dr. Ann Cavoukian, Information and Privacy Commissioner of Ontario, has hosted a Privacy by Design event on Data Privacy Day for the past three years to promote the concept of embedding privacy into technology and to encourage privacy friendly practices, services, and products among international businesses.

The FTC should continue to provide educational resources for businesses about complying with statutory requirements and about privacy issues generally. In addition to the excellent materials created by the FTC, privacy resources for businesses should be available from the Small Business Association, the Social Security Administration, the FDIC, the IRS and other agencies. The surveys, reports, workshops, roundtables and topic-specific guides produced by the FTC are also helpful educational contributions. Collaborating with industry associations and nonprofit groups working in the area of business education will promote broader access to these opportunities and materials.

## Conclusion

Consumer education and access to information are themes of the Report because consumers cannot have a voice in the current debate, nor can they take steps to protect their own information, if they lack a fundamental understanding of how that information is being

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<sup>8</sup> Some of the companies participating in Data Privacy Day in 2011 include: Intel, Microsoft, Visa, Google, Access Information Management, Acxiom Corporation, ADT Security Services, Akin Gump Strauss Hauer & Feld LLP, Blue Cross and Blue Shield of North Carolina, CCS & Co. LLC, Catalog Choice, Cisco, Computation Ltd., CSIdentity, DataGuidance, Deloitte, Deluxe Corporation, Digital Copier Security Inc., Duke Energy, ebay Inc., First Data, GFI Software, GSMA Europe, Harsco, HiSoftware, Hogan Lovells, IBM, LCE-Digital Forensics & investigations, nControl LLC, Oracle EMEA, Privacy Analytics, Procter & Gamble, Reputation.com, RBC, The SANS Institute, SOCAN, Southern California Edison, TechNet, Trend Micro, and Western Union.



collected, used and stored. The FTC asks companies to engage in educational efforts. The FTC also already engages in numerous educational initiatives of its own. However, the FTC should plan to work with companies, and more importantly, work actively and publicly with nonprofits dedicated to privacy education, to maximize the reach of a multi-faceted, ongoing educational endeavor.

Sincerely

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